

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JESSE JAMES YODER,

Plaintiff,

v.

No. 20cv1242 JCH/GJF

CITY OF LAS CRUCES,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE’S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on: (1) Defendant’s Motion for Judgment on the Pleadings (Doc. 24) (“Motion”), filed April 21, 2021, and (2) the Magistrate Judge’s Proposed Findings and Recommended Disposition (Doc. 28) (“PFRD”), filed May 28, 2021. In the PFRD, United States Magistrate Judge Gregory J. Fouratt recommended that the Court grant Defendant’s Motion by (1) dismissing this case without prejudice and (2) allowing Plaintiff to file a motion for leave to amend his Complaint. (Doc. 28 at 6.) The PFRD also notified the parties of their ability to file objections within fourteen days and warned them that the failure to file objections would waive appellate review. *Id.* at 7. The fourteen-day deadline has now expired without either party filing objections. Furthermore, upon review of the record, the Court concurs with the Magistrate Judge’s PFRD.

The Tenth Circuit has held that “a party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.” *U.S. v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Cir. 1996). The parties’ failure to timely object to the Magistrate Judge’s Proposed Findings and Recommended Disposition waives appellate review of both factual and legal questions. *In re*

Key Energy Res. Inc., 230 F.3d 1197, 1199–1200 (10th Cir. 2000); *One Parcel of Real Property*, 73 F.3d at 1059.

IT IS THEREFORE ORDERED as follows:

1. The Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 28) is ADOPTED as an Order of the Court;
2. Defendant's Motion for Judgment on the Pleadings (Doc. 24) is GRANTED in that Plaintiff's Complaint (Doc. 1-2 at 8-9) is DISMISSED WITHOUT PREJUDICE; and
3. Plaintiff is permitted to file a motion for leave to amend his Complaint no later than thirty days from the entry of this order. If Plaintiff fails to timely file a motion to amend his Complaint (or if such a motion is filed but subsequently denied), the Court will dismiss Plaintiff's Complaint with prejudice.

IT IS SO ORDERED.


SENIOR UNITED STATES DISTRICT JUDGE